LAM KONG CO LTD

v.

THONG GUAN CO PTE LTD

COURT OF APPEAL, KUALA LUMPUR
LAMIN MOHD YUNUS PCA
ABDUL MALEK AHMAD JCA
AHMAD FAIRUZ JCA
[CIVIL APPEAL NO: J-02-29 OF 1998]
24 NOVEMBER 1999

CIVIL PROCEDURE: *Appeal - Appeal to Court of Appeal - Leave - Courts of Judicature Act 1964, s. 68(1)(a) - Amount or value of subject matter of claim less than RM250,000 - Whether leave required - Practice Direction (Court of Appeal) No 2 of 1996, item (ii) - Declarations - Whether only applies where subject matter has no value attached or value cannot be quantified - Whether damages can be added to value of subject matter of claim - Whether damages prayed for render value of subject matter of claim unquantifiable*

The three applications herein before the Court of Appeal were: (i) encl 7a by the appellant for leave to file an additional record of appeal; (ii) encl 8a by the appellant for a stay of the High Court order appealed from; and (iii) encl 11a by the respondent for the dismissal of the appellant's appeal for want of leave. It was the appellant's contention that the declaration prayed for in the respondent's statement of claim came within the terms of Practice Direction (Court of Appeal) No 2 of 1996 and thus leave was not necessary.

Held:
Per Lamin Mohd Yunus PCA

[1a] The value of the subject matter of the claim in this case, *ie,* the value of the contract price, was below RM250,000; hence, leave must first be obtained, in accordance with s. 68(1)(a) of the Courts of Judicature Act 1964 ('the CJA'), before an appeal could be filed.

[1b] Item (ii) of Practice Direction (Court of Appeal) No 2 of 1996 applies only to declarations respecting subject matters that have no value attached to them or those with values that cannot be quantified.

[1c] The damages prayed for in the respondent's statement of claim did not render the value of the subject matter of the claim unquantifiable. Damages are consequential; they do not form the subject matter of the claim nor can they be added to the value of the subject matter of the claim for the purposes of s. 68(1)(a) of the CJA.

[Encl 11a allowed, appellant's notice of appeal struck out; encls 7a and 8a dismissed.]

Case(s) referred to:
Amer Mohideen Dawood v. Sneh Bhar w/o Ter Binder Singh [1996] 2 CLJ 955 ***(refd)***

Legislation referred to:
Courts of Judicature Act 1964, s. 68(1)(a)

For the appellant - R Abraham (S Sothi with him); M/s Brockett & Cho
For the respondent - M Pathmanathan (Gan Techiong with him); M/s Gan & Lim

[Appeal from High Court, Johor Bahru; Civil Suit No: 22-254 of 1979]

Reported by Gan Peng Chiang

JUDGMENT

Lamin Mohd Yunus PCA:

There were three applications before us namely encls. (7a), (8a) and (11a). Enclosure (7a) was an application by the appellant for leave to file an additional Record of Appeal. Enclosure (8a) was an application also by the appellant for a stay of the order made by the High Court on 29 December 1997 pending the final disposal of the appeal by this court of the said order. Enclosure (11a) was an application by the respondent praying for an order that the appellant's appeal filed in this court on 7 January 1998 be dismissed on the ground that it was filed without first obtaining the leave of this court and therefore incompetent.

The three applications came before us on 28 May 1998. We decided to hear encl. (11a) first as the fate of the other two applications would depend on the outcome of the application in encl. (11a). We unanimously allowed the application with costs. The Notice of Appeal was struck out. Accordingly the motions in encls. (7a) and (8a) must be dismissed and we therefore dismissed them but with no order as to costs.

If we may briefly state the background of this case which is as follows. The respondent (the plaintiff below) on 28 July 1967 entered into a sale and purchase agreement with the appellant (defendant below) wherein the respondent agreed to purchase twenty six pieces of land situated at Jalan

Pandan in the District of Johore Bahru, Johore in the Mukim of Tebrau at the price of S$52,000 (see agreement p. 14 of encl. (11a)). The respondent paid the full purchase price but for several years the directors of the appellant could not be located in order to facilitate the transfer. The respondent then filed a writ at the Johore Bahru High Court against the appellant. Upon service being effected with the original statement of claim, the appellant failed to enter appearance. The respondent thereby entered default judgment on 14 January 1980. On 22 March 1982 upon the respondent's application, the senior assistant registrar executed the instruments of transfer and authorised the respondent to apply to the collector of Land Revenue, Johore for the issuance of new Issue Documents of Title. On 28 October 1984 the collector of Land Revenue issued new Issue Documents of Title to the respondent. But due to some error, the transfer was only effected in respect of 25 pieces out of 26. The last Title was still in the possession of the appellant. However the default judgment dated 14 January 1980 was subsequently set aside by the Federal Court on 10 May 1985 thereby rendering it necessary to proceed to trial. For the purpose of the trial an amended statement of claim was filed (see p. 20 of encl. (8a)) and a decision of the court was delivered on 29 December 1997 (see p. 16 of encl. (7a)).

Section 68(1) of the Courts of Judicature Act 1964 (hereafter "the Act") states that no appeal shall be brought to the Court of Appeal:

> (a) when the amount or value of the subject-matter of the claim (exclusive of interest) is less than two hundred and fifty thousand ringgit except with the leave of the Court of Appeal.

It is undisputed that the value of the subject-matter in this case which was the value of the contract price was below RM250,000 and we are of the view that it falls squarely within the requirement of s. 68(1)(a) of the Act in that leave must first be obtained before an appeal can be filed. Learned counsel for the applicant/appellant in respect of encls. (7a) and (8a) however argued that the declaration prayed for in the statement of claim would come within the terms of the Court of Appeal Practice Direction No. 2 of 1996 relating to "declarations" and so no leave would be required. The said Practice Direction lays down the types of declarations in respect of which leave is not required thus:

> (ii) Deklarasi – untuk mengisytiharkan bahawa sesuatu pemberian lesen, perbuatan, peninggalan atau keputusan sesuatu badan atau mana-mana orang yang diberi kuasa oleh undang-undang adalah tidak sah dan terbatal.

[**Translation**

(ii) Declarations – to declare that the giving of a licence, an act, an omission or decision of a body or person empowered by law is invalid and annulled.]

It is quite clear to us that the declarations as described above are those that relate to subject-matters which either do not have any value attached to them or which value cannot be quantified. In the case before us, the subject-matter was the sale and purchase agreement with a contract price relating to the sale price of the 26 pieces of land.

Learned counsel for the applicant/appellant also urged us that the damages prayed for in prayer (vi) in the statement of claim should be added to the value of the subject-matter so that the total value would be unknown; thus it would pass the test laid down in s. 68(1)(a) of the Act and therefore leave would not be required. We however were unable to accept such a proposition for the reason that s. 68(1)(a) of the Act clearly specifies that the "value" that is required to be quantified must be the "value" of the subject-matter "of the claim". The damages as prayed in prayer (vi) are only consequential. They are not the "subject-matter of the claim."

In his final submission, the learned counsel for the applicant/appellant asked the court that he be allowed to file a motion for leave. We thought it was too late in the day for the request to be entertained. The said Practice Direction was issued in 1996, while the present applications were filed two years later. To interpret item (ii) of the said Practice Direction against s. 68(1)(a) of the Act is not a difficult task. The case of *Amer Mohideen Dawood v. Sneh Bhar w/o Ter Binder Singh* [1996] 2 CLJ 955 was cited to us in support of the proposition that an appeal the subject-matter of which comes within the terms of s. 68(1)(a) of the Act where the value is less than RM250,000 is incompetent. The Court of Appeal in this case decided as to the meaning of the words "the amount of the claim" or "the value of the subject-matter of the claim" as found in s. 68(1)(a) of the Act. It decided that the "amount" or "value" must be "the total amount of the claim in the action which has been adjudged to be payable" or the value of the subject-matter of the claim "in the action which has been adjudged as recoverable because it is against the judgment (and not against the claim made by the claimants in the pleadings)". That case was decided on 6 April 1996 which was before the issuance of the said Practice Direction. (They were issued on 27 June 1996). In the present case, the whole action had been disposed of. The purchase price of the land was S$52,000 (which was below RM250,000) as in the agreement. Even if the 26 issue documents of title were to be taken as the subject-matter of the claim, they must still be considered as having value because they relate to those 26 pieces of land as referred to in the sale and purchase agreement which

stipulated the total price. In the *Amer Mohideen Dawood* case, the value of the subject-matter of the order for specific performance of the sale and purchase agreement of 14 September 1989 was the purchase price of the land which was RM99,000. Being below RM250,000 the court ruled that the "appeal was therefore incompetent as no leave to appeal was obtained from the Court of Appeal." In the case before us it was the matter of declaration that added another facet to the case. Once the "subject-matter of the claim" has been identified and its value determined the question of declaration becomes a non-issue.

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